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**BEFORE THE
FEDERAL ELECTION COMMISSION 2004 AUG 30 A 10: 11**

Kerry-Edwards 2004, Inc.
P.O. Box 34640
Washington, DC 20043

v.

Swift Boat Veterans for Truth
P.O. Box 26184
Alexandria, VA 22313,

President George W. Bush
1600 Pennsylvania Avenue
Washington, DC 20500,

Vice President Richard B. Cheney
1600 Pennsylvania Avenue
Washington, DC 20500,

Bush-Cheney 2004
P.O. Box 10648
Arlington, VA 22210,

Dave Herndon, Treasurer
Bush-Cheney 2004
P.O. Box 10648
Arlington, VA 22210,

Republican National Committee
310 First Street, SE
Washington, DC 20003,

Mike Retzer, Treasurer
Republican National Committee,
310 First Street, SE
Washington, DC 20003,

Karl Rove,

Roy Hoffman
9030 Ivebridge Crossing
Richmond, VA 23236,

Charles Plumly,

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
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2004 AUG 30 A 10: 29

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Kenneth Cordier,, and

Merrie Spaeth
Spaeth Communications
3405 Oak Grove Avenue
Dallas, TX 75204

COMPLAINT

Complainants file this complaint against the Swift Boat Veterans For Truth ("SBVT"); its Steering Committee Members: Roy Hoffman, chairman, Weymouth Symmes, treasurer, Charles Plumly, William Franke, Alvin A. Horne, Bill Lannon, and John O'Neill; its contributors: Bob Perry, Harlan Crow and John O'Neill; its strategists Merrie Spaeth and Karl Rove; the

Republican National Committee ("RNC") and its treasurer, Mike Retzker; President George W. Bush; Vice President Richard B. Cheney; Bush-Cheney 2004 and its treasurer, Dave Herndon; and Kenneth Cordier, an agent of Bush-Cheney 2004, for violations of the reporting and contribution provisions of the Federal Election Campaign Act, as described below.

Swift Boat Veterans for Truth purports to be an independent organization; it accepts and spends unlimited "soft money" under the pretense that it acts independently from the President's re-election campaign. However, the facts do not support SBVT's claim of independence. This group's campaign of outrageous lies has been coordinated with the Bush campaign and the Republican Party from the outset. This sham organization is funded by the same Republican operatives who are helping to finance and run Bush's campaign. More worrisome still is the crucial role of Republican insiders in the strategic decisions of SBVT. Finally, in a brazen act of coordination, a senior policy adviser to the Bush campaign and a member of its steering committee actually appears in the most recent SBVT advertisement, making every dollar spent a contribution to Bush-Cheney 2004.

This illegal campaign strikes at the heart of the Federal Election Campaign Act and the Bipartisan Campaign Reform Act of 2002. It represents an effort by a national campaign to evade responsibility both for complying with federal contribution limits and restrictions, and to take responsibility for the false claims it makes. To preserve the integrity of the law, the Commission must move quickly and aggressively take action against this conduct.

I. FACTS

A. The Swift Boat Veterans for Truth Advertisements are False and Misleading

The advertisement currently being paid for by SBVT is a collection of falsehoods and misleading statements. They are designed to give the false impression that Senator Kerry's conduct during the Vietnam War was anything but honorable and courageous, while trying to

shield President Bush from responsibility for making these charges. Each speaker in the advertisement has been discredited.

The facts are these: Senator Kerry volunteered for service in the United States Navy. He volunteered again to be sent to Vietnam and for Swift boat duty. During his period of service in Vietnam, he received three Purple Heart medals for receiving wounds in the line of duty, the Bronze Star, and the Silver Star. For over 35 years, none of the speakers in the SBVT advertisement have publicly questioned Senator Kerry's record of service; indeed, at one time or another, either in interviews, in speeches or in official Navy documents, many have confirmed that Senator Kerry has served with honor and courage and appeared publicly to defend Kerry against the same charges made by this group.

George Elliott claims in the ad that Senator Kerry "has not been honest about what happened in Vietnam." But in 1996, he spoke on Senator Kerry's behalf, saying: "The fact that he chased an armed enemy down is not something to be looked down upon, but it was an act of courage. And the whole outfit served with honor." Moreover, in 1969 Mr. Elliott, on an official Navy fitness report, wrote, "In a combat environment often requiring independent decisive action, Lt. j.g. Kerry was unsurpassed." Mr. Elliott ranked Senator Kerry as "not exceeded" in eleven categories on the fitness report, including the categories of moral courage and judgment. He wrote that Kerry was "unsurpassed" and "beyond reproach."¹ Finally, as noted below, Mr. Elliott has recently called his allegations against Senator Kerry "a terrible mistake" and admitted that he has no firsthand knowledge of the charges he made.

¹ See Kate Zernike & Jim Rutenberg, *Friendly Fire: The Birth of an Anti-Kerry Ad*, New York Times, Aug. 20, 2004.

Roy Hoffman, the chairman of SBVT, also stated in the ad that Senator Kerry "has not been honest." However, in a June 2003 interview, Hoffman noted that Senator Kerry's heroism in Vietnam "took guts, and I admire that."²

Louis Letson stated in the ad, "I know that John Kerry is lying about his first Purple Heart because I treated him for that injury." Dr. Letson's name appears nowhere in Senator Kerry's medical records, including the record of the treatment for the injury that led to his first Purple Heart.³

Adrian Lonsdale stated in the ad that Senator Kerry "lacks the capacity to lead." This statement is a dramatic departure from his statements in the past, where he noted the "bravado and courage of the young officers that ran the Swift boats," and stated that "Senator Kerry was no exception. He was among the finest of those Swift boat drivers."⁴

Finally, Van Odell stated in the ad that Senator Kerry "lied to get his Bronze Star." SBVT claims that Senator Kerry was not under fire when he risked his life to save his crewmate, Jim Rassmann. But Senator Kerry's Bronze Star citation clearly states, "All units began receiving small arms and automatic weapons fire from the river banks." And the Bronze Star citations of other sailors there that day confirms that the Swift boats came under fire. The Bronze Star citation awarded to Larry Thurlow, now a spokesman for SBVT, for the events that transpired that day makes clear that all units in the flotilla came under fire – including that of Senator Kerry.⁵ The citation states that there was both "enemy small arms" and "automatic

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ See Michael Dobbs, *Records Counter a Critic of Kerry*, Washington Post, Aug. 19, 2004.

weapons fire," and there were "enemy bullets flying about."⁶ The third Bronze Star citation awarded based on the events of that day was given to Robert Eugene Lambert, a petty officer on Thurlow's Swift boat. His citation also states that "all units came under small arms and automatic weapons fire from the river banks."⁷ Against this wealth of evidence to the contrary, Van Odell recently admitted that that he does "not have a single document" to buttress his claim.⁸

Even Republican Senator and war hero John McCain has called these advertisements "dishonest and dishonorable." He has called on President Bush to denounce and condemn them.² George W. Bush has refused to do so, signaling the complicity of his campaign in making these outrageous charges..

B. Bush-Cheney 2004 Suggested that Independent Groups Run Advertisements

Despite their incessant criticism of progressive groups, the Bush-Cheney campaign and the Republican Party have been explicit about their intent to push conservative "527" groups to spend money to promote George W. Bush's candidacy and influence the upcoming federal election. To take one example: in response to FEC actions in May 2004, a joint press release by the Chairman of the Bush-Cheney campaign and the Republican National Committee Chairman (RNC) stated that "[c]onservative groups now have the go-ahead they were waiting for as the commission has now made clear that these '527' groups will not be affected by the federal

⁶ *Id.*

⁷ See David Corn, *New Evidence Undermines Swift Vets' Attack on Kerry*, The Nation, Aug. 22, 2004, at <http://www.thenation.com/capitalgames/index.mhtml?bid=3&pid=1692>.

⁸ Reuters, *Vietnam Vet Says He Has No Proof for Claim Kerry Lied*, Aug. 22, 2004.

² Associated Press, Aug. 5, 2004.

campaign finance rules, at least in 2004.”¹⁰ This release appears to have been a signal to “independent” Republican groups to raise money and attempt to influence the presidential election. As a leading press article reported, this RNC press release “astonished some GOP political strategists by its explicit reference to GOP groups, interpreted as a signal to Republican donors to begin giving to these groups.”¹¹

SBVT took the hint. After getting the signal from the Bush-Cheney campaign and RNC Chairmen, the SBVT began raising money from Republican donors. Indeed, the SBVT had raised only \$53,500 from 4 donors (including Crow and O’Neill) before the RNC and Bush-Cheney campaign issued their joint press release.¹² The SBVT has raised over \$450,000 since the Bush-Cheney campaign and the RNC issued their press release. With the help of longtime GOP financier and operator Bob Perry, this group began running ads – right at the end of the Democratic convention – highly critical of John Kerry and his war record, which is viewed by many observers as a key advantage over President Bush’s military record. When asked during an interview with CNN “whether the intent of SBVT’s ads was to defeat Kerry, [Horne] answered, ‘Yes, of course.’”¹³

¹⁰ RNC Press Release, *Joint Statement by Bush-Cheney Campaign Chairman Marc Racicot and RNC Chairman Ed Gillespie on Today’s FEC Ruling on 527 Groups*, May 13, 2004 (Tab 1).

¹¹ Alexander Bolton, *GOP Leaders Reverse Field, Build A New 527 Network*, The Hill, May 19, 2004 (Tab 2).

¹² <http://forms.irs.gov/politicalOrgsSearch/search/Print.action?formId=13244&formType=E72>.

¹³ Terry M. Neal, “Nonpartisan” *Swift Boat Ad?*, Washington Post, Aug. 13, 2004.

C. The SBVT Is Financed by Key Republican Operatives

SBVT claims to be funded by swift boat veterans,¹⁴ but that is a half-truth at best. Based on press reports, the SBVT group is administered and funded by key Republican operatives with close and extensive ties to the Bush White House. Fox News has reported on this connection: “Kerry’s military service was an asset during the primaries; critics hoped to transform it into a liability now. The GOP says it’s not involved with the veterans criticizing Kerry, but many of them are Republicans who have contributed to and backed various Bush campaigns and causes over the decades.”¹⁵

Overall, according to the 2004 second quarter IRS report filed by the SBVT, 94.5% of the contributions to the SBVT have come from three donors in Texas — Bob Perry, John O’Neill, and Harlan Crow.¹⁶ Perry, who is not a swift boat veteran, was by far the largest contributor in the second quarter of 2004, giving \$100,000 to the SBVT, or two-thirds of this group’s total funding.¹⁷ Perry has been a dependable supporter of the Republicans – and the Bush family in particular – over the past few decades. According to press accounts, Perry is the largest contributor to the GOP in Texas politics, donating over \$5 million in 3 years to Republican and conservative causes.¹⁸ He has also been a staunch backer of the entire Bush family over the

¹⁴ See the SBVT’s website, at <http://swift1.he.net/~swiftvet/index.php?topic=FAQ>.

¹⁵ Fox News, *Special Report*, by Carl Cameron, May 4, 2004.

¹⁶ See <http://forms.irs.gov/politicalOrgsSearch/search/Print.action?formId=13244&formType=E72>.

¹⁷ See IRS website, available at <http://forms.irs.gov/politicalOrgsSearch/search/Print.action?formId=13244&formType=E72>.

¹⁸ See *Dallas Morning News*, “Builder’s Money Talks, but What Is It Saying?,” Nov. 2, 2003, available at http://www.tpj.org/page_view.jsp?pageid=310&pubid=165; see also <http://herndon1.sdrdc.com/cgi-bin/qind/> (FEC site).

(Lezar's widow is Merrie Spaeth, SBVT's media consultant.). Another partner in O'Neill's small law firm was Margaret Wilson, Bush's General Counsel during his second term as Texas Governor.²⁶ O'Neill has contributed over \$14,000 to Republican candidates since 1992—including the maximum amount to George W. Bush's father's campaign for president.

The third large financial backer of SBVT is Harlan Crow, a longtime supporter of the Bush family's political campaigns and a "Trustee" of the George Bush Foundation.²⁷ Crow's support for the Bush family reaches as far back as 1978, when he was a contributor to George W. Bush's unsuccessful campaign for the U.S. House of Representatives.²⁸ Crow has been generous with other conservative groups aligned with the Republican Party as well. For example, he has given \$380,000²⁹

D. Reports Show that the SBVT's Key Advisers Are Leading Republicans

As the New York Times notes, there is "a web of connections to the Bush Family, high profile Texas political figures, and President Bush's chief political aide, Karl Rove."³⁰ The main point of contact in this charade is Merrie Spaeth. According to press accounts, Spaeth has served as SBVT's main media contact.³¹ Her GOP connections are extensive. As noted above, she was

Salon.com, Mar. 23, 2004, at http://archive.salon.com/opinion/conason/2004/04/23/o_neill/index.html.

²⁶ *Id.*

²⁷ See <http://www.georgebushfoundation.org/bush/asp/OverView/Trustees.asp>.

²⁸ See Robert Dreyfuss, *George W's Compassion*, The American Prospect, Sept. 1, 1999, available at <http://www.prospect.org/web/page.ww?section=root&name=ViewPrint&articleId=4507>.

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³⁰ Zernike & Rutenberg, *supra*.

at one time married to Harold Lezar, who ran on the ticket with George W. Bush for Lieutenant Governor of Texas in 1994.³² Spaeth was a speechwriter for President Richard Nixon, special counsel to the Attorney General under President Reagan, and also served as Director of Media Relations in the Reagan White House.³³ She originally claimed that she had visited the White House only once since George W. Bush has been in office, receiving a personal tour of the White House from Ken Starr. However, she has recently recanted that claim, admitting that she spent an hour in the White House complex in the spring of 2003 giving advice to the President's chief economic adviser.³⁴

Spaeth's own account of the formation of SBVT is telling. According to Salon.com,

³¹ See Joe Conason, *Same Vicious Techniques They Used Against McCain*, Salon.com, May 4, 2004, available at <http://archive.salon.com/opinion/conason/2004/05/04/swift/>. Spaeth is a familiar figure in GOP circles. As outlined by Salon.com, in 1998:

[Spaeth] coached Kenneth Starr, the independent counsel, to prepare him for his testimony urging the impeachment of President Clinton before the House Judiciary Committee. . . . In 2000, Spaeth participated in the most subterranean episode of the Republican primary contest when a shadowy group billed as "Republicans for Clean Air" produced television ads falsely attacking the environmental record of Sen. John McCain in California, New York and Ohio. While the identity of those funding the supposedly "independent" ads was carefully hidden, reporters soon learned that Republicans for Clean Air was simply Sam Wyly -- a big Bush contributor and beneficiary of Bush administration decisions in Texas -- and his brother, Charles, another Bush "Pioneer" contributor.

Id.

³² See Stephen Braun, *Navy Veterans Fire on Kerry*, L.A. Times, May 4, 2004, available at <http://www.latimes.com/news/politics/2004/la-na-swift4may04,1,3513758.story?coll=la-headlines-elect2004>.

³³ See Dallas Morning News, Jan. 6, 2004; Spaeth Communications Inc. website, available at http://www.spaethcom.com/about_executive.html.

³⁴ See Zernike Rutenberg, *supra*.

Spaeth told Salon that O'Neill first approached her last winter to discuss his "concerns about Sen. Kerry." O'Neill has been assailing Kerry since 1971, when the former Navy officer was selected for the role by Charles Colson, Richard Nixon's dirty-tricks aide. Spaeth heard O'Neill out, but told him, she says, that he "sounded like a crazed extremist" and should "button his lip" and avoid speaking with the press. But since Kerry clinched the Democratic nomination, Spaeth has changed her mind and decided to donate her public relations services on a "pro bono" basis to O'Neill's latest anti-Kerry effort. "About three weeks ago, four weeks ago," she said, the group's leaders "met in my office for about 12 hours" to prepare for their Washington debut.³⁵

Spaeth's methods have attracted criticism and scrutiny before. The main press conference held by SBVT, which Spaeth organized, was "set up by the same people who tried to discredit John McCain's reputation in Vietnam service when McCain faced George W. Bush for the Republican nomination in 2000. It's the same strategy used to go after Georgia Senator Max Cleland, who lost three limbs in Vietnam."³⁶ It is hardly surprising, then, that in the second quarter of this year, 46% of SBVT's disbursements in the second quarter of 2004 have gone to Spaeth's communications firm.³⁷

Another point of evidence was the recent interview of Matthew Dowd, Bush's spokesperson, on Face the Nation. In response to a question about SBVT, Dowd said the following: "We have a group, the swift boat veterans that have spent \$200,000."³⁸ Dowd's admission that SBVT is part of the Republican machine is a telling one.

³⁵ *Id.*

³⁶ CBS Evening News, *Veterans Attack Kerry on Vietnam*, by Byron Pitts, May 4, 2004, available at <http://www.cbsnews.com/stories/2004/05/04/eveningnews/main615566.shtml>.

³⁷ *See* <http://forms.irs.gov/politicalOrgsSearch/search/Print.action?formId=13244&formType=E72>.

³⁸ CBS, Face the Nation, Aug. 15, 2004.

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A recent incident involving Captain George Elliott tellingly reveals the hand-in-glove relationship between the SBVT and the Republican Party. A *Boston Globe* story published on August 6, 2004, reported that Captain George Elliott, featured in the SBVT's ad denouncing John Kerry, stated:

[H]e had made a "terrible mistake" in signing an affidavit that suggests Kerry did not deserve the Silver Star Yesterday, reached at his home, Elliott said he regretted signing the affidavit and said he still thinks Kerry deserved the Silver Star. "I still don't think he shot the guy in the back," Elliott said. "It was a terrible mistake probably for me to sign the affidavit with those words. I'm the one in trouble here." Elliott said he was no under personal or political pressure to sign the statement, but he did feel "time pressure" from those involved in the book. "That's no excuse," Elliott said. "I knew it was wrong . . . In a hurry I signed it and faxed it back. That was a mistake."³⁹

The SBVT issued a press release that same day, and the contact phone number for this release was "703-683-5004." This phone number belongs to Creative Response Concepts, based in Arlington, VA. According to its website, CRC's current and former clients include the Republican National Committee, the National Republican Senatorial Committee and the National Republican Congressional Committee⁴⁰—the three national committees responsible for the election of the George Bush and Republican members of Congress. This connection provides strong reason to believe that Spaeth's media firm is serving as a conduit of information between SBVT and the RNC and the campaign, so that these entities may coordinate their spending in their efforts to reelect President Bush.

The most blatant evidence of coordination involves the SBVT's newest advertisement. The ad features, in part, retired Air Force colonel Kenneth Cordier criticizing Senator Kerry.

³⁹ Michael Kranish, *Veteran Retracts Criticism of Kerry*, *Boston Globe*, Aug. 6, 2004.

⁴⁰ See CRC's website, available at <http://www.crc4pr.com/firm/clients.asp>.

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Until August 21, well after the ad was developed and distributed, Mr. Cordier was a member of the Bush-Cheney 2004 Veteran's National Steering Committee. As such, Mr. Cordier was an integral part of the team that helped to craft the Bush campaign's policy positions regarding Veterans.⁴¹ In an apparent effort to hide this coordination, the Bush campaign first reacted by deleting reference to Mr. Cordier from its website. When this change was detected by the media, the Bush campaign essentially fired Mr. Cordier. This effort to first cover up, and then deny Mr. Cordier's role in the campaign is important evidence of consciousness of guilt.

Further evidence of this coordination between the Bush campaign and SBVT became public on August 20, when the Bush-Cheney 2004 headquarters in Alachua County, Florida – which is housed in the county Republican headquarters – distributed a flyer that advertised a rally to be held over the weekend of August 21st and 22nd. The flyer advertised the rally as including SBVT, the Alachua County Republicans, Veterans for Bush, the Alachua Bush/Cheney Committee, Vietnam Veterans Against Kerry, and "Republican Candidates."⁴² The flyer was publicly displayed in, and handed out at, the Bush-Cheney headquarters in Alachua County.⁴³ The event was also advertised via e-mail from the Secretary of the Alachua County Republican Executive Committee.⁴⁴ The Republican groups were invited to participate by SBVT.⁴⁵ This joint rally between agents of the Bush campaign and SBVT demonstrates that these entities are

⁴¹ See Dana Milbank, *Bush Campaign Drops Swift Boat Ad Figure*, Washington Post, Aug. 22, 2004.

⁴² The flyer is attached at tab 3.

⁴³ Greg C. Bruno *et al.*, *Swift Boats Vets Back Out of Speech at Local Rally*, Gainesville Sun, Aug. 22, 2004.

⁴⁴ *Id.*

⁴⁵ *Id.*

working hand-in-glove to smear Senator Kerry and his record of service. Subsequently, other Republican Party committees have begun to coordinate with SBVT; for instance, the website of the Santa Clara, California Republican Party includes a banner advertisement for, and link to, SBVT.⁴⁶

II. LEGAL ARGUMENT

There is overwhelming evidence that (reason to believe that) SBVT is conducting its expenditures on advertising and other activities designed to influence the presidential election with the Bush-Cheney campaign. Through its volunteers, advisers and funders, the campaign coordinated with SBVT to produce and disseminate advertising critical of Senator Kerry's service in Vietnam. As a result, the Bush campaign has broken nearly every core provision of the campaign finance laws: it has accepted illegal contributions; it has accepted excessive contributions; it has raised and spent soft money; it has concealed its spending from the Commission and the public; and it has falsely omitted its authorization of these false ads from the disclaimers. Finally, the evidence demonstrates that through its involvement with SBVT, the Bush campaign raised and spent soft money.

While the evidence detailed above is more than adequate to establish the multiple violations of the Act and Commission regulations alleged, the only investigation so far has been a hasty one by the press, after the relationship between SBVT and the Bush campaign was first revealed. It is likely that the known facts only scratch the surface of the evidence of coordination and the use of soft money. A thorough investigation by the Commission, and a more searching inquiry by the press, will doubtless reveal even more evidence of the connection between the Bush campaign, the Republican Party, and SBVT's activities.

⁴⁶ See www.santa-clara-gop.org (screenshot at tab 4).

A. The Bush Campaign Coordinated With Swift Boat Veterans for Truth

The Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431 *et seq.* (2004) ("the Act") provides, in part, that "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered a contribution to such candidate." 2 U.S.C. § 441a(a)(7)(B)(i). The term "coordinated communication" is defined in the Commission's regulations at 11 C.F.R. § 109.21 (2004). The SBVT ads fall squarely within the "content" requirements of that section: the ads refer to a clearly identified candidate for public office; they are publicly distributed within 120 days of the general election; and they are directed to relevant voters. *See id.* § 109.21(c)(4). The only question, then, is whether the advertisements meet the "conduct" standard of 11 C.F.R. § 109.21(d). The answer is an unequivocal "yes."

First, the evidence shows that the SBVT ads were created, produced and distributed "at the request or suggestion of" Bush-Cheney 2004. *Id.* § 109.21(d)(1)(i). The Bush campaign explicitly signaled to outside organizations such as SBVT that they should proceed with such advertisements. This, alone raises the suspicion that the activities of SBVT are illegal contributions to the Bush campaign. Moreover, the Bush campaign's response to these advertisements – ranging from the President's own failure to disavow them, to his pollster's candid description of SBVT as a group with "we have" – can only be taken as an intended assent to SBVT's proposed attacks on Senator Kerry.

Second, the evidence indicates that the Bush campaign has been "materially involved in," and has "substantial discussions about," the SBVT advertisements. *Id.* § 109.21(d)(2), (3). The intricate network of money and strategy between SBVT, the Republican National Committee, and Bush-Cheney 2004 demonstrates that agents of President Bush and the Republican Party

were involved in every element of these scurrilous attacks on Senator Kerry. The resulting ads were therefore an illegal contribution to the Bush campaign.

The overt coordination between the Alachua Bush/Cheney Committee and SBVT alone, as evidenced by the joint rally, is enough to constitute a violation of federal election law.⁴⁷ This evidence provides further proof that SBVT is engaged in substantive strategic discussion with the Bush campaign. Moreover, any funds spent by SBVT in connection with this rally would constitute an illegal contribution to the Bush campaign.

Most importantly, press reports have recently described the involvement of Kenneth Cordier, a policy advisor and member of the Bush campaign's steering committee, in the latest SBVT advertisement. This conduct is a *per se* coordination violation. According to press reports, until Saturday, August 21, 2004 Mr. Cordier served as a member of the steering committee that formulated veterans' policy for the Bush campaign, which the campaign then integrated into its strategy. He was therefore an agent of the Bush campaign, as he was authorized to "provide material or information to assist another person in the creation, production, or distribution of" campaign communications. 11 C.F.R. § 109.3(b)(5). Nothing prevents a volunteer from satisfying the definition of "agent"; in fact, the Commission has specifically stated that a volunteer may qualify as an agent of a candidate for purposes of 11 C.F.R. § 109.3.⁴⁸

⁴⁷ Note also that the flyer distributed by the Alachua Bush/Cheney Committee does not contain the "paid for by" disclaimer required by federal law. See 11 C.F.R. § 110.11(b)(1)

⁴⁸ See Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 439 (Jan. 3, 2003) (noting that "in some cases a volunteer may qualify as an agent of a candidate or a political party").

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The Commission has repeatedly stated that the appearance in an advertisement speaking to camera is prima facie evidence of coordination.⁴⁹ Having advised the Bush campaign on veterans' issues, it is inconceivable that Mr. Cordier could not be acting on behalf of the Bush campaign while engaged in a notorious discussion of the Vietnam war focused wholly on the Democratic candidate for President of the United States. Although only one prong of the conduct standard must be satisfied in order for the Commission to find a violation of the law, the irrefutable facts involving Mr. Cordier establish that the Bush campaign and SBVT violated the conduct standard in multiple ways: through the "request or suggestion" standard, the "material involvement" standard, and the "substantial discussion" standard. *See* 11 C.F.R. § 109.21(d).

The "request or suggestion" conduct standard is easily met through Mr. Cordier's role in the SBVT advertisement. One of the ways to satisfy the "request or suggestion" conduct standard is for the person paying for a communication to suggest the creation of the communication and for an agent of a candidate to assent to the suggestion. *See* 11 C.F.R. § 109.21(d)(1)(ii). When the campaign's agent actually appears in such a communication, it is irrefutable that the agent has assented to the creation of the communication.

Mr. Cordier's actions also satisfy the "material involvement" standard, which applies when a candidate's agent is materially involved in decisions regarding the content of a communication. *See* 11 C.F.R. § 109.21(d)(2)(i). There is no question that Mr. Cordier was materially involved in the content of the SBVT communication, as he appeared in the advertisement and related his opinions regarding Senator Kerry.

Finally, the Bush campaign and SBVT violated the "substantial discussion" prong of the conduct standard, which is met when a communication is created after one or more substantial

⁴⁹ *See* Advisory Opinions 2004-1 and 2003-25.

discussions about the communication between the person paying for the communication and an agent of the opponent of the candidate who is clearly identified in the communication. *See* 11 C.F.R. § 109.21(d)(2)(iii). It is inconceivable that a communication that actually features an agent of the Bush campaign could have been created by SBVT without some substantive discussion with that agent.

It is uncontroverted that at the same time Mr. Cordier was a member of the Bush campaign steering committee he was also involved in the development and content of the SBVT's latest advertisement. Mr. Cordier's activities leave no doubt that the Bush campaign and SBVT have satisfied the conduct standard in multiple ways, thus rendering the ad an illegal in-kind contribution to George W. Bush and the Bush-Cheney campaign.

Moreover, because of the material involvement of a member of the Bush campaign's steering committee in the development of SBVT's anti-Kerry advertising campaign, any SBVT advertisements that are part of this series but that have not yet been aired will also constitute illegal coordination with the Bush campaign. It is not necessary for the involvement of a candidate to be traced directly to one specific communication when a candidate's agent has been materially involved in decisions regarding the strategy for a series of communications. For example, as the Commission has stated, "if a candidate is materially involved in a decision about the content or timing of a 10-part advertising campaign, then each of the 10 communications is coordinated without the need for further inquiry into the decisions regarding each individual ad on its own."⁵⁰ Thus, the Bush campaign's dismissal of Mr. Cordier does not inoculate the remainder of the advertisements in SVBT's anti-Kerry series; each will constitute an illegal in-kind contribution to the Bush campaign.

B. George Bush and Dick Cheney Have Illegally Solicited and Spent Soft Money

The Act prohibits candidates, individuals holding Federal office, agents of the foregoing, and entities "directly or indirectly established, financed, maintained, or controlled by" the foregoing from soliciting or spending funds in connection with an election for Federal office, "unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act." 2 U.S.C. § 441i(e)(1)(A). National political party committees and their agents are similarly restricted. 2 U.S.C. § 441i(a). It is uncontroverted that the SBVT advertisements are in connection with a Federal election, that SBVT is not a registered political committee under the Act, and that the funds solicited for, and spent by, SBVT are not subject to the requirements of federal election law.

President Bush, Vice-President Cheney, Bush-Cheney 2004, its treasurer, agents of the campaign Karl Rove and Kenneth Cordier, the Republican National Committee, and its treasurer have engaged in soliciting and spending soft money in violation of the Act. SBVT and its advertisements have been funded through donations of soft money, given by a network of contributors and advisers to the Bush campaign and the Republican Party. Moreover, the tendrils of control the Bush campaign and the Republican Party have exerted over the SBVT advertisements demonstrates that the above individuals and entities have used SBVT as a vehicle to spend soft money in connection with the presidential election. As an entity financed, maintained and controlled by the Bush campaign and the Republican Party, SBVT has also violated the tenets of § 441 by raising and spending soft money.

⁵⁰ *Id.* at 434.

III. REQUESTED ACTION

As we have shown, the respondents have violated the Federal Election Campaign Act. Accordingly, we request that they be enjoined from further violations, be required to repay their illegal contributions and be fined the maximum amount permitted by law.

Sincerely

KERRY-EDWARDS 2004, INC.

By: 

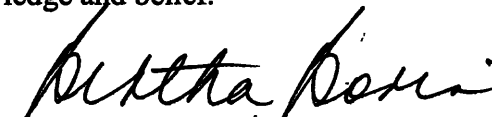
Mary Beth Cahill, its President

COMMONWEALTH OF MASSACHUSETTS



County, ss.

On this 23rd day of August, 2004, before me, the undersigned notary public, personally appeared Mary Beth Cahill, proved to me through satisfactory evidence of identification, which was a current driver's license, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of her knowledge and belief.



Notary Public

My commission expires: 3/3/08

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